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IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:	
GANSEN PUMPING, INC. and JAMES DECKER	ADMINISTRATIVE CONSENT ORDER NO. 2012-AFO-14
Dubuque County, Iowa	

TO: D Flint Drake, Registered Agent
Gansen Pumping, Inc.
1005 Main Street, Suite 200
Dubuque, Iowa 52001

Chad Gansen
Gansen Pumping, Inc.
4817 St. Joes Prairie Road
Zwingle, Iowa 52079

James Decker
Bernard County Dairy
18108 Higgensport Road
Bernard, Iowa 52032

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Gansen Pumping, Inc. (Gansen Pumping) and James Decker for the purpose of resolving violations resulting from a manure discharge from the land application of manure. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:
Rick Martens, Field Office 1
Iowa Department of Natural Resources
909 West Street, Suite 4
Manchester, Iowa 52057
Phone: 563/927-2640

Relating to legal requirements:
Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:
Director of the Iowa DNR
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

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II. JURISDICTION

This administrative consent order is issued pursuant to the provisions of Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1; Iowa Code chapter 459 and the rules adopted or permits issues pursuant thereto; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Gansen Pumping is a commercial applicator service that operates in the Zwingle, Iowa area. Chad Gansen operates Gansen Pumping. James Decker owns and operates Bernard County Dairy located on a 200 acre farm in section 33 of Prairie Township, Dubuque County, Iowa. Bernard County Dairy is a 350 head dairy and manure from the facility is maintained in a formed manure storage structure. Mr. Decker has hired Gansen Pumping for previous manure applications. Field application of the manure from Bernard County Dairy normally occurs three times each year, but in 2010 four applications were required.

2. On November 29, 2010, DNR Field Office 1 received a complaint alleging that manure from Bernard County Dairy was being improperly land applied. The complainant expressed concern about the impact of the application to a nearby stream.

3. On November 30, 2010, Rick Martens, DNR Field Office 1 environmental specialist, investigated the complaint. Mr. Martens arrived in Bernard, Iowa and proceeded west on County Road D-53. Mr. Martens observed a field on the south side of the road, immediately west of Bernard; manure had recently been applied to the field. Mr. Martens observed water flowing from the field entering the south road ditch. The water was brown, foamy, and had a strong manure odor. The field test of the discharge indicated a high concentration of ammonia nitrogen greater than 3 milligrams per liter (mg/L). The laboratory samples indicated that the ammonia nitrogen concentration was 77 mg/L. Mr. Martens observed the flow proceed north through a culvert under County Road D53 into an unnamed tributary of Prairie Creek.

4. Mr. Martens left County Road D-53 and travelled north along the unnamed tributary to the downstream road crossing at Obrien Road. The water was turbid, foamy, and had a strong manure odor. The field test indicated a high concentration of ammonia nitrogen greater than 3 mg/L. The laboratory sample indicated that the ammonia nitrogen concentration was 4.6 mg/L. Mr. Martens also observed dead fish along the stream; he noted that the stream flow had recently receded. Mr. Martens notified DNR Fisheries Bureau of the dead fish.

5. Mr. Martens returned to County Road D-53 and followed the discharge south to a grass waterway. At the fence crossing, Mr. Martens observed a cement wall, recent ditching, and a black plastic field tile discharging water. The grass waterway was approximately 40 feet wide and extended south into the picked corn field several hundred feet. This was the application field Mr. Martens first observed when he began his investigation. There was standing liquid manure in the waterway and along the waterway field margins. Manure containing liquids were flowing through the waterway. The field sloped to the waterway and it appeared that recent runoff had occurred. The field surface was exposed soil with little residual corn stalks. Manure solids and pooled manure were observed in the field. The field test of the water at the west edge of the grass waterway indicated a high concentration of ammonia nitrogen greater than 3 mg/L. The laboratory sample indicated an ammonia nitrogen concentration of 340 mg/L.

6. Mr. Martens travelled to Mr. Decker's farm located at 18108 Higginsport Road, Bernard, Iowa. Mr. Martens met with Mr. Decker regarding the complaint. Mr. Decker explained that Gansen Pumping had pumped manure from the manure storage structure and land applied it to the 40 acre field the previous day. Mr. Decker stated that Gansen Pumping has two previous applications from the facility in August and September 2010. Mr. Decker had intended on starting the recent application sooner, but Gansen Pumping was not available. Mr. Decker explained that Gansen Pumping had begun the manure application on Sunday evening, November 28, 2010 and concluded Monday morning, November 29, 2010. Mr. Decker told of the conversation he had with Gansen Pumping regarding the field conditions. Due to the frozen hard ground, standard incorporation of the manure was not possible. Chisel plowing was attempted in several areas of the field but only one strip near the far west fence was completed. Mr. Decker and Gansen Pumping agreed that manure would be surface applied to the field. Mr. Decker told Mr. Martens that following the manure application, the field received ¼ to ½ inch of rain. He stated that the field always had wet areas in the grass waterway, but that he had made recent drainage improvements, including the ditching and tiling that Mr. Martens had observed.

7. Following the discussion with Mr. Decker, Mr. Martens went to the city of Bernard's wastewater lagoons which were located immediately northwest of the application field. Mr. Martens met with the city's wastewater operator who stated the last discharge from the lagoons to the unnamed tributary of Prairie Creek was on August 28, 2010. Mr. Martens inspected the discharge outlet valve and did not observe any flow from the lagoons.

8. Mr. Martens continued downstream and inspected Prairie Creek below the confluence with the unnamed tributary. At the Bernard Road crossing, the Stoffel Road crossing, and the Fishcher Road crossing field tests indicated the presence of ammonia. The water was turbid and Mr. Martens observed dead fish. Mr. Martens continued downstream and observed Lytle Creek below the confluence

with Prairie Creek at the Lyons Road crossing. No ammonia was detected; the water was noticeably clearer; and no dead fish were observed.

9. Mr. Martens met with Chad and Jim Gansen with Gansen Pumping. They discussed the complaint and Mr. Martens' conversation with Mr. Decker. Chad Gansen stated that from 10:00 pm Sunday, November 28 through 10:00 am Monday, November 29, that Gansen Pumping hose irrigated 10,100 gallons per acre of liquid manure to 37 acres of Mr. Decker's field. Chad Gansen stated there was limited incorporation because of the ground frost. He said Gansen Pumping tried to incorporate but broke six shanks and then stopped. Chad Gansen spoke to Mr. Decker about the field conditions and stated that incorporation by injection or chisel plowing would not be used.

10. Mr. Martens, Chad Gansen, and Jim Gansen went to the manure application field at the headwaters of the unnamed tributary of Prairie Creek. Jim Gansen pointed out an upstream feedlot with a small flow that enters the south D-53 road ditch from the east. The field test from the ditch did not indicate significant ammonia nitrogen. The gentlemen then travelled west to the D-53 road ditch and observed the manure runoff from the grass waterway to the ditch. The field test indicated that the ammonia nitrogen concentration was still high at this location. Chad Gansen stated that no manure was applied to the grass waterway and that a 50 to 75 feet buffer had been maintained. The Gansen Pumping representatives had been unaware of the runoff. The group continued into the application field to the location where Gansen Pumping had tried to use the chisel plow. Evidence of manure runoff from the field to the grass waterway was observed. Mr. Martens explained how the field slope, the minimal corn stalk residue, the limited incorporation, the improvements to the drainage in the grass waterway, and the rainfall had all contributed to the manure runoff into the unnamed tributary of Prairie Creek. The group went to the Obrien Road crossing of the unnamed tributary of Prairie Creek. The water was turbid, contained foam, and had a manure odor. There were dead fish and the field test indicated a high concentration of ammonia nitrogen greater that 3 mg/L.

11. Following the discussion with Gansen Pumping, Mr. Martens returned to the south D-53 road ditch. The water no longer had a manure odor and the field test indicated a lower level of ammonia nitrogen. The laboratory sample indicated an ammonia nitrogen concentration of 0.46 mg/L. Mr. Martens also collected a water sample approximately 50 feet downstream of the D-53 road crossing in the unnamed tributary of Prairie Creek. The field test indicated the presence of ammonia nitrogen and the laboratory sample indicated an ammonia nitrogen concentration of 2.9 mg/L. The water was clearing, but still turbid, foamy, and had a strong manure odor. Manure solids were observed in the stream.

12. On December 7, 2010, DNR issued Notice of Violation letters to Gansen Pumping and Mr. Decker for the violations observed during the inspection

on November 30, 2010. The letters required Mr. Decker to submit a plan of action to DNR Field Office 1 within 30 days and Gansen Pumping was required to submit the manure application records within 30 days. Both reports were submitted to the field office. The letters informed both parties that further enforcement may occur.

13. DNR Fisheries led the fish kill assessment and the assessment determined that the manure discharge caused a 3.2 mile fish kill on an unnamed tributary of Prairie Creek and Prairie Creek. The assessment calculated the number of fish killed was 2,766, with a monetary value of $1,665.64. Investigative costs related to this incident total $900.85 ($501.21 for the Fisheries Bureau and $399.64 for the Field Services Bureau).

14. Both Mr. Decker and Gansen Pumping have stated that as corrective actions they will if at all possible avoid manure application during times when field conditions are not appropriate due to frozen soil conditions. In addition, Mr. Decker has stated on fields where there is little residue due to corn silage harvesting he will till the ground early in the season following harvest to provide a rougher field surface if there is no alternative but to surface apply manure due to frozen soil conditions.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into water of the state, except for adequately treated pollutants discharged pursuant to a permit from the DNR. During Mr. Martens' investigation it was determined that manure from Mr. Decker's facility that was applied by Gansen Pumping was discharged into an unnamed tributary of Prairie Creek. The above-mentioned facts indicate violations of these provisions.

2. 567 IAC 65.2(3) describes the minimum level of manure control for confinement feeding operations as the retention of all manure produced in the confinement enclosure between periods of waste disposal. 567 IAC 65.2(3) further states that in no case shall manure from the confinement feeding operation be discharged into a water of the state. During Mr. Martens' investigation it was determined that manure from Mr. Decker's facility that was applied by Gansen Pumping was discharged into an unnamed tributary of Prairie Creek. The above-facts disclose violations of this provision.

3. 567 IAC 61.3(2) provides general water quality criteria and prohibits discharges that will produce objectionable color, odor or other aesthetically objectionable conditions; settle to form sludge deposits; interfere with livestock watering; or are toxic to animal or plant life. The laboratory results indicated elevated pollutants and a fish kill was confirmed. Mr. Martens observed foamy water that was turbid and had a manure odor. The above mentioned facts indicate violations of the general water quality criteria.

4. Iowa Code section 481A.151 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. The DNR has adopted 571 IAC 113. 571 IAC 113 provides that a person who is liable for polluting a water of this state in violation of state law shall also be liable to pay restitution to the DNR for injury caused to a wild animal by the pollution. A fish kill resulted from the manure from Mr. Decker's facility that was applied by Gansen Pumping was discharged into an unnamed tributary of Prairie Creek.

5. Iowa Code section 455B.392(1)(c) authorizes the DNR to hold a person having control over a hazardous substance strictly liable to the state for the damages to natural resources resulting from a hazardous condition caused by that person; damages includes the "costs of assessing the injury."

V. ORDER

THEREFORE, the DNR orders and Gansen Pumping and Mr. Decker agree to do the following:

1. Gansen Pumping and Mr. Decker shall pay fish restitution in the amount of $1,665.64 and investigative costs in the amount of $900.85 within 30 days of the date the Director signs this administrative consent order;

2. Gansen Pumping and Mr. Decker shall pay an administrative penalty in the amount of $6,400.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to $5,000.00 per day of violation for each of the water quality violations involved in this matter.

2. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to $10,000.00, which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with an administrative penalty of $6,400.00. Gansen Pumping and Mr. Decker are jointly and severally liable for the penalty. The administrative penalty is determined as follows:

Economic Benefit – Gansen Pumping and Mr. Decker have gained an economic benefit from their failure to properly contain all the manure. Gansen Pumping and Mr. Decker were able to save time and money by not properly applying and incorporating the manure. Mr. Decker was in need of storage capacity and told Gansen Pumping to continue to land apply even thought the manure couldn't be incorporated. Gansen Pumping chose to continue a job where conditions were not favorable. 567 IAC 10.2(1) states, "reasonable estimates of economic benefit should be made where clear data are not available." A reasonable estimate is that Gansen Pumping and Mr. Decker have gained an economic benefit of at least $1,400.00 and that amount is assessed for this factor.

Gravity – One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. DNR Field Office 1 documented a manure discharge that led to documented water quality violations and a fish kill. These violations threaten the integrity of the regulatory programs because compliance with the animal feeding operation is required of all persons in this state. Therefore, $3,000.00 is assessed for this factor.

Culpability – Gansen Pumping and Mr. Decker have a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that their conduct is subject to DNR's rules. When Mr. Decker was notified that the manure was unable to be incorporated he instructed Gansen Pumping to continue the manure application. Gansen Pumping continued the manure application even though it was aware of the fact that the manure could not be incorporated. Therefore, $2,000.00 is assessed for this factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Gansen Pumping and Mr. Decker. For that reason Gansen Pumping and Mr. Decker waive the right to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: GANSEN PUMPING, INC. and JAMES DECKER

ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 26th day of April, 2012.

GANSEN PUMPING, INC.

Dated this 19 day of APRIL, 2012.

JAMES DECKER

Dated this 19 day of APRIL, 2012.

Kelli Book, DNR Field Office 1, EPA, VIII.D.1.a and VIII.D.3.a